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COMMITTEE ON ECONOMIC, SOCIAL
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Draft optional protocol providing for the consideration of communications

Report submitted by Mr. Philip Alston

A. Introduction

1. The present report provides an analysis of the issues that will need to be examined by the Committee on Economic, Social and Cultural Rights, and subsequently the Commission on Human Rights, in their consideration of the proposal to adopt an optional protocol to the International Covenant on Economic, Social and Cultural Rights providing for an optional communications procedure. The report has been prepared in response to a decision by the Committee at its ninth session requesting Mr. Philip Alston to prepare a paper analysing the proposal further, in the light of earlier discussions, and identifying the principal characteristics of a possible optional complaints procedure. 1/

2. The preparation of an optional protocol has been under consideration by the Committee since its fifth session. 2/ In the following year the adoption of such a protocol was expressly recommended by Mr. Danilo Türk, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the realization of economic, social and cultural rights in his final report. 3/ Subsequently, two separate reports have been prepared at the Committee's request by Mr. Philip Alston and have provided the basis for extensive discussions within the Committee. At its seventh session the Committee adopted a consolidated "analytical paper" which it submitted to the World Conference on Human Rights. 4/ In addition to that analysis, the Committee made the following submission in its general statement to the Conference:

> [T]he Committee believes that there are strong reasons for adopting a complaints procedure (in the form of an optional protocol to the Covenant) in respect of the economic, social and cultural rights recognized in the Covenant. Such a procedure would be entirely non-compulsory and would permit communications to be submitted by individuals or groups alleging violations of the rights recognized in the Covenant. It might also include an optional procedure for the consideration of inter-State complaints. Various procedural safeguards designed to guard against abuse of the procedure would be adopted. They would be similar in nature to those applying under the first Optional Protocol to the International Covenant on Civil and Political Rights. 5/

3. On the basis of these and other submissions, and of extensive debates in the Plenary and the Drafting Committee, the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action in which, inter alia, it "encourage[d] the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights". 6/ Although the reference is to "protocols" (in the plural) the only specific proposal before the Conference related to an optional communications procedure. This commitment was reiterated by the Commission on Human Rights which, in paragraph 6 of its resolution 1994/20, took note of the "steps taken by the Committee ... for the drafting of an optional protocol granting the right of individuals or groups to submit communications concerning non-compliance with the Covenant, and invites the Committee to report thereon to the Commission on Human Rights at its fifty-first session".

B. Parallel developments in relation to the Convention on the Elimination of All Forms of Discrimination against Women

4. The World Conference on Human Rights called upon the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women to "quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women". 7/ At its 1994 session the Committee called for the appointment of a group of five to 10 independent experts with specialist knowledge of the preparation and operation of optional protocols. 8/ The Committee proposed that the resulting draft be reviewed first by itself and subsequently by the Commission on the Status of Women. The Commission subsequently decided to take up this issue at its 1995 session.

5. In the meantime, an expert meeting was convened under independent auspices at the University of Limburg in the Netherlands, from 29 September to 1 October 1994. The meeting was organized by the Maastricht Centre for Human Rights and the Women in the Law Project of the International Human Rights Law Group. Participants included members of the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, and the Committee on the Elimination of Racial Discrimination as well as other experts, from all regions, in the field of international human rights and the human rights of women. The meeting adopted a comprehensive draft optional

protocol to the Convention on the Elimination of All Forms of Discrimination against Women. In the preparation of the present analysis use has been made of that draft, which will be before the Committee on the Elimination of Discrimination against Women at its next session in January 1995.

C. Preliminary considerations

6. It will be recalled that, in the analysis it submitted to the World Conference, the Committee emphasized the following aspects of the proposed optional protocol:

(1) any protocol to the Covenant will be strictly optional and will thus only be applicable to those States parties which specifically agree to it by way of ratification or accession;

(2) the general principle of permitting complaints to be submitted under an international procedure in relation to economic, social and cultural rights is in no way new or especially innovative, given the precedents that exist within the ILO, UNESCO, the ECOSOC Resolution 1503 procedure, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador of 1988), and proposals currently under consideration within the Council of Europe;

(3) experience to date with a wide range of existing international petition procedures indicates that there is no basis for fears that an optional protocol will result in a vast number of complaints;

(4) under an optional protocol procedure the State party concerned retains the final decision as to what will be done in response to any views adopted by the Committee; and

(5) that if the principle of the indivisibility, interdependence and interrelatedness of the two sets of rights is to be upheld in the work of the United Nations, it is essential that a complaints procedure be established under the Covenant on Economic, Social and Cultural Rights, thereby redressing the imbalance that presently exists.

D. An analysis of the possible provisions of an optional protocol

7. The following analysis is based primarily upon the discussions held by the Committee on Economic, Social and Cultural Rights to date as reflected in the analysis adopted by the Committee for consideration by the World Conference on Human Rights. It also takes account of the proposed draft relating to an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. In addition, it draws heavily on the approach adopted in existing communications procedures under United Nations human rights treaties, and particularly the first Optional Protocol to the Covenant on Civil and Political Rights.

8. The draft offered below does not provide for an inter-State procedure, along the lines of those included in various of the other core human rights treaties such as the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. While the possibility of doing so was briefly canvassed in the Committee's earlier "analytical paper", it is not apparent that there is, as yet, strong support for this approach. Nevertheless, the option remains open and it may be noted that the draft optional protocol relating to the Convention on the Elimination of All Forms of Discrimination against Women does propose the adoption of an inter-State procedure.

1. Preamble

9. The Preamble to the first Optional Protocol consists of a single paragraph. For present purposes it would seem appropriate not to depart significantly from the basic simplicity of this approach. However, since the proposed protocol is not being adopted at the same time as the Covenant (as was the case in relation to the first Optional Protocol to the Covenant on Civil and Political Rights), and if it is thought desirable to indicate some of the reasons for establishing an additional procedure, consideration might be given to the inclusion of some brief additional explanatory provisions. These could relate, for example, to the interdependence of the two sets of rights, the contribution of the World Conference on Human Rights, the role of the Committee on Economic, Social and Cultural Rights and the relationship between this protocol and the international community's broader economic and social development objectives.

10. The proposed text of the Preamble is:

> The States parties to the present Protocol:
>
> Recalling that the Vienna Declaration and Programme of Action recognized that "all human rights are universal, indivisible and interdependent and interrelated",
>
> Convinced that social justice and development, including the realization of economic, social and cultural rights, are essential elements in the construction of a just and equitable national and international order,
>
> Emphasizing the role of the Economic and Social Council, and through it the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) in developing a better understanding of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) and in promoting the realization of the rights recognized therein,
>
> Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it is appropriate to

enable the Committee to receive and examine, in accordance with the provisions of this Protocol, communications alleging violations of the Covenant,

Have agreed as follows:

2. Recognition of the Committee's competence

11. In communications procedures generally the first article contains the provision by which a State party recognizes the competence of the Committee to receive communications. It is traditional in such texts to distinguish between the receipt of a communication (which does not necessarily imply that it will subsequently be examined) and the consideration, or examination, phase (which occurs once the various procedural requirements have been met). The first Optional Protocol uses both the latter verbs - "consider" and "examine" - without implying any clear distinction. Given its own practice of referring to the "examination" of communications that verb is used in the following draft proposals.

12. The terminology used in this provision is critical in defining the nature and scope of the procedure as a whole. There are, in this respect, four principal matters for discussion. The first is whether an entity other than an individual should be permitted to submit a communication. It was noted in the Committee's earlier analysis that a "strong and clear preference for an individual" focus had been indicated by the members of the Committee in the debate at its seventh session. 9/ By the same token, there is good reason in dealing with economic, social and cultural rights not to exclude groups from submitting communications, provided that at least some of their members can claim to be victims of the alleged violations. In this regard the reference in Commission on Human Rights (resolution 1994/20, to "granting the right of individuals or groups to submit communications" seems appropriate. Moreover, it may be noted that the Human Rights Committee has, in practice, dealt with many communications submitted by individuals on behalf of affected groups.

13. The second issue is whether the Protocol should refer to a "violation ... of ... the rights set forth in the Covenant" (to use the wording of art. 1 of the first Optional Protocol) or should instead refer to a failure by the State party to give effect to its obligations under the Covenant. The latter terminology might be read as applying not only to the rights recognized in articles 1 to 15 but also to the procedural obligations contained in Part IV of the Covenant relating to reporting, etc. It is not clear, however, that it is desirable for individuals to be able to bring a communication against a State party on the grounds that it has failed to report in a timely fashion, or at all. While such behaviour clearly constitutes a violation of the State's obligations, there are alternative means by which the Committee has sought to address such problems.

14. A requirement that a "violation" be alleged would not have the effect of exposing a State party to a successful complaint solely by virtue of its failure to ensure to a specific complainant the full realization of a given right. The obligation of the State under the Covenant, and thus the question of whether a violation had occurred, would still depend upon the facts of the case and a consideration of the implications of the terminology used both in

the substantive provision recognizing the right and in article 2 (1) of the Covenant defining the nature of the obligation. There would thus seem to be no reason not to follow the approach used in the first Optional Protocol of referring to a violation. The only qualification would be to use the term "recognized" rather than "set forth", in view of the different terminology used in each of the Covenants.

15. The third issue is whether "standing" to submit a communication should be extended to individuals and groups who, although not themselves victims of a violation, have what is deemed "a sufficient interest" in the matter (to use the phrase used in the CEDAW draft). It should be noted that this broad approach is not necessary merely in order to permit a communication to be submitted by another person or group on behalf of an individual claiming to be a victim of a violation. The Human Rights Committee has consistently interpreted article 1 of the first Optional Protocol to accommodate that situation - an approach which is clearly reflected in rule 90 (1) (b) of the Committee's rules of procedure. The broader formulation would therefore seem to envisage a situation in which a public interest group or some other type of non-governmental organization might be authorized by the protocol to bring a complaint without having to identify and act with, or on behalf of an individual or group claiming to be a victim of a violation. While this would have the advantage of permitting complaints which sought to anticipate violations, whether imminent or merely possible, it would also broaden considerably the scope of the obligation assumed by States parties and would potentially open the door to speculative complaints. Under the circumstances, therefore, it is difficult to see a sufficient justification for extending the procedure in this manner.

16. The fourth issue is whether the procedure should apply to all of the rights recognized in the Covenant or to only some of them. After canvassing four different options, the Committee's analytical paper submitted to the World Conference opted for an inclusive rather than a restrictive approach. However, in order to exclude the reporting obligations contained in part IV of the Covenant it is proposed to restrict the coverage of the procedure to the rights recognized in articles 1 to 15 of the Covenant.

17. Finally, it would also seem appropriate for this provision to reflect the fact that the Economic and Social Council remains the formally designated supervisory body under the terms of the Covenant and that the Committee's role is dependent upon its continuing to be the body to which this function has been delegated by the Council. There would, however, presumably need to be some mechanism by which the Council consulted the States parties to the protocol before taking any such decision. While consideration might be given to requiring a simple or two-thirds majority vote on the part of the States parties, any such requirement would seem to be problematic in legal terms. Since the Committee is formally a creation of the Council it retains the right to disband it. An optional protocol could not therefore purport to restrain the Council's exercise of its authority in this regard.

18. The proposed text of article 1 is:

> 1. A State party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and examine communications from any individuals or groups subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights recognized in the Covenant.
>
> 2. For the purposes of this Protocol, the Economic and Social Council may, if it so decides, designate another body to carry out the functions attributed herein to the Committee. Before making any such designation, the Council shall consult fully with the States parties to this Protocol.

3. Right to submit a communication

19. It is appropriate to include a provision which not only affirms the right of an individual or group to submit a written communication alleging a violation of the rights recognized in the Covenant, but also obliges States parties to do whatever is necessary to enable potential complainants to submit communications. The importance of this aspect of a complaints procedure has consistently been highlighted by the Commission on Human Rights in a series of resolutions since 1990. Based on a report of the Secretary-General, 10/ the Commission, in its resolution 1994/70, requested the treaty bodies to take urgent steps, in conformity with their mandates, to help prevent the hampering of access to United Nations human rights procedures in any way. The Commission also urged Governments to refrain from all acts of intimidation or reprisal against, inter alia, those who submit or have submitted communications under procedures established by human rights instruments. It therefore seems appropriate for a specific provision of this nature to be included in the protocol.

20. The proposed text of article 2 is:

> 1. Any individual or group claiming to be a victim of a violation of any of the rights recognized in the Covenant may submit a written communication to the Committee for examination.
>
> 2. States parties to this Protocol undertake not to hinder in any way the effective exercise of the right to submit a communication and to take all steps necessary to prevent any interference with the exercise of this right or the victimization of any person or group submitting or seeking to submit a communication under this Protocol.

4. Receivability and admissibility

21. Bringing together the various provisions relating to receivability and admissibility within a single article of the draft protocol would seem to be the most convenient approach. For the most part, these various procedural rules are based directly upon the formulations used in the first Optional Protocol. For the purposes of this draft they have been reorganized slightly but the wording remains almost identical in its key provisions.

22. The proposed text of article 3 is:

1. No communication shall be received by the Committee if it is anonymous or concerns a State which is not a party to this Protocol.

2. The Committee shall declare a communication inadmissible if it:

(a) does not contain allegations which, if substantiated, would constitute a violation of rights recognized in the Covenant;

(b) constitutes an abuse of the right to submit a communication; or

(c) relates to acts and omissions which occurred before the entry into force of this Protocol for the State party concerned, unless those acts or omissions:

(i) constitute a continuing violation of the Covenant; or

(ii) have effects which continue beyond the entry into force of this Protocol and those effects themselves appear to constitute a violation of a right recognized in the Covenant.

3. The Committee shall not declare a communication admissible unless it has ascertained:

(a) that all available domestic remedies have been exhausted, unless the Committee considers that the application of this requirement would be unreasonable; and

(b) that a communication submitted by or on behalf of the author which raises essentially the same issues of fact and law is not being examined under another procedure of international investigation or settlement. The Committee may, however, examine such a communication where the procedure of international investigation or settlement is unreasonably prolonged.

5. Substantiation of Complaints

23. In any complaints procedure there is an onus placed upon the complainant to provide information which gives substance to the allegations that have been made. Moreover, it is appropriate to provide the Committee with the opportunity to re-examine a communication if new information is provided to it after it has already taken a decision to declare the communication inadmissible on the basis of its first examination.

24. The proposed text of article 4 is:

1. The Committee may decline to continue to examine a communication if the author, after being given a reasonable opportunity to do so, fails to provide information which would sufficiently substantiate the allegations contained in the communication.

2. The Committee may recommence examination of a communication which it has declared inadmissible under article 3 if the circumstances which led to its decision have changed.

6. Interim measures

25. Although the first Optional Protocol does not contain a specific provision dealing with interim measures, procedures which have been adopted subsequently by the Human Rights Committee have addressed this important issue. While it is not necessary to adopt a blanket provision which would apply in all cases, the Committee should be given the discretion, to be used in appropriate cases, to request that interim measures be taken.

26. The proposed text of article 5 is:

1. At any time after the receipt of a communication, and before a determination on the merits has been reached, the Committee may request the State party concerned to take such interim measures as may be necessary to preserve the status quo or to avoid irreparable harm.

2. The State party concerned shall take all necessary steps to comply with a request made by the Committee under paragraph 1.

7. Reference to State party and friendly settlement

27. The great majority of communications procedures provide for the possibility of reaching a friendly settlement with the State party concerned. Particularly in view of the nature of economic, social and cultural rights, it would seem especially appropriate to provide for a procedure of friendly settlement in the draft protocol. For this purpose the Committee would specifically indicate its preparedness to facilitate such a settlement, provided only that the resulting arrangement is based upon respect for the rights and obligations contained in the Covenant.

28. The other matter in this regard is the setting of a time limit within which a State must respond to information received from the Committee. While the first Optional Protocol provides for a period of six months, the extensive delays that this has occasioned in relation to the work of the Human Rights Committee, as well as developments in communications technology since 1966, would seem to warrant a time limit which is much more consistent with respect for the rights of complainants. It is therefore proposed that the time limit be set at three months.

29. The proposed text of article 6 is:

1. Unless the Committee considers that a communication should be declared inadmissible without reference to the State party concerned, the Committee shall confidentially bring any communication referred to it under this Protocol to the attention of the State party concerned, but the identity of the author shall not be revealed without the latter's express consent.

2. Within three months, the receiving State shall submit to the Committee explanations or statements and the remedy, if any, that may have been afforded by that State.

3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect for the rights and obligations set forth in the Covenant.

4. If a settlement is reached, the Committee shall prepare a report containing a statement of the facts and of the solution reached.

8. Examination of communications

30. The first Optional Protocol specifies that the Committee shall base itself upon "all written information made available to it by the individual and by the State party concerned". In practice this is a very generous provision since it would not exclude information from any source provided only that it is specifically submitted by one party or the other. Nevertheless, it seems unduly restricted and counterproductive for the Committee not to be able to take into account information which it has obtained for itself from other sources. It is proposed to add authorization for such action to be undertaken by the Committee, on condition that any such information would also be provided to both parties for comment.

31. Article 5 of the first Optional Protocol does not specify the procedures to be used by the Committee in examining communications, other than to state that its consideration shall take place in closed meetings. It is unnecessary for the draft protocol to be any more detailed and it would seem to be sufficient to indicate that the Committee is empowered to adopt its own procedures for the consideration of communications and that such consideration should take place in private session. The only significant question for consideration by the Committee is whether it would wish to include the possibility of a visit to the territory of a State party as part of its examination of a communication. By providing such an option, to be employed only if the State party concerned wishes to exercise it, the procedure would have the flexibility required to enable the Committee, in cooperation with the State party, to tailor the best approach under the circumstances.

32. The proposed text of article 7 is:

1. The Committee shall examine communications received under this Protocol in the light of all information made available to it by or on behalf of the author and by the State party concerned. The Committee may also take into account information obtained from other sources, provided that this information is transmitted to the author and State party for comment.

2. The Committee may adopt such procedures as will enable it to ascertain the facts and to assess the extent to which the State party concerned has fulfilled its obligations under the Covenant.

3. As part of its examination of a communication, the Committee may, with the agreement of the State party concerned, visit the territory of that State party.

4. The Committee shall hold closed meetings when examining communications under this Protocol.

5. After examining a communication, the Committee shall adopt its views on the claims made in the communication and shall transmit these to the State party and to the author, together with any recommendations it considers appropriate.

9. Results of examination

33. While the first Optional Protocol provides only that the Committee shall forward its views to the two concerned parties, the practice of the Human Rights Committee has developed very significantly in recent years in relation to the various follow-up procedures. It would therefore seem appropriate in drafting a protocol in 1994 to be more specific as to the recommendations that the Committee might make with a view to remedying any violation which it has identified. This approach would be entirely consistent with the importance attached by the Covenant on Civil and Political Rights to the provision of an appropriate remedy for violations, and with the approach proposed in the study prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities concerning "the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms". 11/

34. The proposed text of article 8 is:

1. Where the Committee is of the view that a State party has failed to give effect to its obligations under the Covenant, the Committee may recommend that the State party take specific measures to remedy any violation and to prevent its recurrence.

2. The State party shall take all steps necessary to remedy any violation of the rights recognized in the Covenant. The State party shall implement any recommendations made by the Committee, and shall ensure that adequate reparation or other appropriate remedy is provided.

3. The State party concerned shall, within three months of receiving notice of the decision of the Committee under paragraph 1, or such longer period as may be specified by the Committee, provide the Committee with details of the measures which it has taken in accordance with paragraph 2.

10. Follow-up procedures

35. Once again, while the first Optional Protocol does not spell out the procedures which will be used in relation to following up on the adoption of views in particular cases, the Human Rights Committee has developed an

extensive procedure for this purpose. It therefore seems appropriate to reflect that procedure in the provisions contained in the proposed draft protocol.

36. The proposed text of article 9 is:

> 1. The Committee may at any time invite a State party to discuss with it the measures which the State party has taken to give effect to the views or recommendations of the Committee.
>
> 2. The Committee may invite the State party concerned to include in its reports under article 18 of the Covenant details of any measures taken in response to the Committee's views and recommendations.
>
> 3. The Committee shall include in its annual report an account of the substance of the communication and its examination of the matter, a summary of the explanations and statements of the State party concerned, of its own views and recommendations, and the response of the State party concerned to those views and recommendations.

11. Rules of procedure, servicing etc.

37. In view of the fact that the text of the Covenant itself does not contain specific provisions relating to the adoption of rules of procedure, the meetings of the Committee or the responsibility of the Secretary-General for the servicing of the Committee, it would seem appropriate for this lack to be remedied in relation to the communications procedure provided for in the draft protocol. Provisions comparable to those contained in other major human rights treaties are therefore proposed.

38. The proposed text of article 10 is:

> The Committee may make rules of procedure prescribing the procedure to be followed when it is exercising the functions conferred on it by this Protocol.

39. The proposed text of article 11 is:

> 1. The Committee shall meet for such period as is necessary to carry out its functions under this Protocol.
>
> 2. The Secretary-General of the United Nations shall provide the Committee with the necessary staff and facilities for the performance of its functions under this Protocol, and in particular shall ensure that expert legal advice is available to the Committee for this purpose.

12. Final articles

40. For the most part, the final articles proposed for inclusion in the present draft protocol are identical to those already included in the first Optional Protocol. Changes have been made only where this would seem necessary or appropriate for an instrument which may be adopted in 1996 rather than in 1966. In particular, the provisions requiring the Secretary-General

to circulate the various documents and other information would seem to be superfluous today in view of the regular notification of State parties of all such developments.

41. The proposed text of the Final Articles is reproduced in articles 12 to 18 of the Annex to the present document. No commentary is offered at this stage in view of the fact that they are reasonably self-explanatory and that the Committee will need to resolve the more substantive matters dealt with in the earlier articles before discussing these provisions.

Notes

1/ E/1994/23, para. 387.

2/ E/1991/23, para. 25.

3/ E/CN.4/Sub.2/1992/16, para. 211.

4/ A/CONF.157/PC/62/Add.5, Annex II.

5/ Ibid., Annex I, para. 18.

6/ Vienna Declaration and Programme of Action, Part II, para. 75.

7/ Ibid., para. 40.

8/ Report of the Committee on the Elimination of Discrimination against Women, Thirteenth Session, UN doc. A/49/38 (1994) 10.

9/ A/CONF.157/PC/62/Add.5, Annex II, para. 66.

10/ E/CN.4/1994/42.

11/ E/CN.4/Sub.2/1993/8.

Annex

Consolidated text of draft optional protocol

Article 1

1. A State party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and examine communications from any individuals or groups subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights recognized in the Covenant.

2. For the purposes of this protocol, the Economic and Social Council may, if it so decides, designate another body to carry out the functions attributed herein to the Committee. Before making any such designation, the Council shall consult fully with the States parties to this Protocol.

Article 2

1. Any individual or group claiming to be a victim of a violation of any of the rights recognized in the Covenant may submit a writ en communication to the Committee for examination.

2. State parties to this Protocol undertake not to hinder in any way the effective exercise of the right to submit a communication and to take all steps necessary to prevent any interference with the exercise of this right or the victimization of any person or group submitting or seeking to submit a communication under this Protocol.

Article 3

1. No communication shall be received by the Committee if it is anonymous or concerns a State which is not a party to this Protocol.

2. The Committee shall declare a communication inadmissible if it:

(a) does not contain allegations which if substantiated, would constitute a violation of rights recognized in the Covenant;

(b) constitutes an abuse of the right to submit a communication; or

(c) relates to acts and omissions which occurred before the entry into force of this protocol for the State party concerned, unless those acts or omissions:

(i) constitute a continuing violation of the Covenant; or

(ii) have effects which continue beyond the entry into force of this Protocol and those effects themselves appear to constitute a violation of a right recognized in the Covenant.

3. The Committee shall not declare a communication admissible unless it has ascertained:

(a) that all available domestic remedies have been exhausted, unless the Committee considers that the application of this requirement would be unreasonable; and

(b) that a communication submitted by or on behalf of the author which raises essentially the same issues of fact and law is not being examined under another procedure of international investigation or settlement. The Committee may, however, examine such a communication where the procedure of international investigation or settlement is unreasonably prolonged.

Article 4

1. The Committee may decline to continue to examine a communication if the author, after being given a reasonable opportunity to do so, fails to provide information which would sufficiently substantiate the allegations contained in the communication.

2. The Committee may recommence examination of a communication which it has declared inadmissible under article 3 if the circumstances which led to its decision have changed.

Article 5

1. At any time after the receipt of a communication, and before a determination on the merits has been reached, the Committee may request the State party concerned to take such interim measures as may be necessary to preserve the status quo or to avoid irreparable harm.

2. The State party concerned shall take all necessary steps to comply with a request made by the Committee under paragraph 1.

Article 6

1. Unless the Committee considers that a communication should be declared inadmissible without reference to the State Party concerned, the Committee shall confidentially bring any communication referred to it under this Protocol to the attention of the State party concerned, but the identity of the author shall not be revealed without the latter's express consent.

2. Within three months, the receiving State shall submit to the Committee explanations or statements and the remedy, if any, that may have been afforded by that State.

3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect for the rights and obligations set forth in the Covenant.

4. If a settlement is reached, the Committee shall prepare a report containing a statement of the facts and of the solution reached.

Article 7

1. The Committee shall examine communications received under this Protocol in the light of all information made available to it by or on behalf of the author and by the State party concerned. The Committee may also take into account information obtained from other sources, provided that this information is transmitted to the author and State party for comment.

2. The Committee may adopt such procedures as will enable it to ascertain the facts and to assess the extent to which the State party concerned has fulfilled its obligations under the Covenant.

3. As part of its examination of a communication, the Committee may, with the agreement of the State party concerned, visit the territory of that State party.

4. The Committee shall hold closed meetings when examining communications under this Protocol.

5. After examining a communication, the Committee shall adopt its views on the claims made in the communication and shall transmit these to the State party and to the author, together with any recommendations it considers appropriate.

Article 8

1. Where the Committee is of the view that a State party has failed to give effect to its obligations under the Covenant, the Committee may recommend that the State party take specific measures to remedy any violation and to prevent its recurrence.

2. The State party shall take all steps necessary to remedy any violation of the rights recognized in the Covenant. The State party shall implement any recommendations made by the Committee, and shall ensure that adequate reparation or other appropriate remedy is provided.

3. The State party concerned shall, within three months of receiving notice of the decision of the Committee under paragraph 1, or such longer period as may be specified by the Committee, provide the Committee with details of the measures which it has taken in accordance with paragraph 2.

Article 9

1. The Committee may at any time invite a State party to discuss with it the measures which the State party has taken to give effect to the views or recommendations of the Committee.

2. The Committee may invite the State party concerned to include in its reports under article 18 of the Covenant details of any measures taken in response to the Committee's views and recommendations.

3. The Committee shall include in its annual report an account of the substance of the communication and its examination of the matter, a summary of the explanations and statements of the State party concerned, of its own views and recommendations, and the response of the State party concerned to those views and recommendations.

Article 10

The Committee may make rules of procedure prescribing the procedure to be followed when it is exercising the functions conferred on it by this Protocol.

Article 11

1. The Committee shall meet for such period as is necessary to carry out its functions under this Protocol.

2. The Secretary-General of the United Nations shall provide the Committee with the necessary staff and facilities for the performance of its functions under this Protocol, and in particular shall ensure that expert legal advice is available to the Committee for this purpose.

Article 12

1. This Protocol is open for signature by any State which has signed the Covenant.

2. This Protocol is subject to ratification or accession by any State which has ratified or acceded to the Covenant. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 13

1. This Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the fifth instrument of ratification or accession.

2. For each State ratifying this Protocol or acceding to it after its entry into force, this Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 14

1. This Protocol will be binding upon each State party in respect of all territories subject to its jurisdiction.

2. The provisions of this Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 15

No reservations to this Protocol shall be permitted.

Article 16

1. Any State party to this Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the State parties to this Protocol with the request that they notify him or her whether they favour a conference of State parties for the purpose of considering and voting upon the proposal. If within four months from the date of such communication at least one third of the State parties favours such a conference, the Secretary-General shall convene such a conference under the auspices of the United Nations. Any amendment adopted by majority of the State parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two thirds majority of the State parties to this Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those State parties which have accepted them, other State parties still being bound by the provisions of this Protocol and any earlier amendment which they have accepted.

Article 17

1. Any State party may denounce this Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Denunciations shall be without prejudice to the continued application of the provisions of this Protocol to any communication submitted before the effective date of denunciation.

3. Following the date at which the denunciation of a State party becomes effective, the Committee shall not commence consideration of any new matters regarding that State.

Article 18

This Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.